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In the Supreme Court of the United States

OCTOBER TERM, 1964

HENRY BROWN, WILLIE KELLY, L. C. BIBBENS, ROBERT SMITH AND CLEVELAND MCKINZIE,

Petitioners,

v.

STATE OF LOUISIANA,

Respondent.

RESPONSE OF THE STATE OF LOUISIANA TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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District Attorney,
Clinton, Louisiana.

No. 806

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FACTS

On Saturday morning, March 7, 1964, Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie walked into the front room of the building in the Town of Clinton (pop. 1568) used to house the Audubon Regional Library. The front room of the building was used at the time as a lobby where requests for library books were taken. Only one employee, Mrs. Katie Reeves, was on duty at the time. As soon as the men entered, Mrs. Reeves asked if she could help them. (T. 60). Henry Brown handed her a slip of paper on which was written the words, "Wandell Arna, the Story of the Negro, Bontems." As he

handed Mrs. Reeves the paper, Brown said, "I would like to get this book." (T. 65). Mrs. Reeves then consulted the library card catalogue and ascertained that the library did not have such a book. It was later found that no such book existed. Mrs. Reeves then told Brown that the book would be ordered from the State Library and that he would be notified of its arrival. At this point, Brown had taken one of the two chairs in the room and the other four men were standing around him. Mrs. Reeves later testified (T. 60) that since she could not supply the book at that time, she assumed that the five men would leave. When they made no move to leave, Mrs. Reeves repeated what she had said about the book. No further requests for library service were made by any of the men, they simply remained where they were without saying anything. Mrs. Reeves then requested the five men to leave. The five men simply stayed as they were. Mrs. Reeves then called the Librarian, Mrs. Perkins, who was in a rear room of the building. Mrs. Perkins came into the room and requested the five men to leave the building. They still made no move to do so. At this time, the Sheriff came into the room and asked the men to leave. When they still failed to do so, the Sheriff arrested them.

A bill of information was filed by the District Attorney on March 11, 1964 charging the five men with violating R. S. 14:103.1, relative to disturbing the peace, in that, with the intent to provoke a breach of the peace and under circumstances such that a

breach of the peace might be occasioned thereby, they congregated together in the Audubon Library building in the Town of Clinton, Louisiana and did then and there fail and refuse to leave said premises when ordered to do so by Mrs. Marcia Perkins, who was then and there in lawful charge of said premises and did further refuse and fail to leave said premises when ordered to do so by Arch V. Doughty, Sheriff of the Parish of East Feliciana.

On the trial of the case, it was determined that reason for the conduct of the five petitioners which resulted in their arrest, trial and conviction, was a program initiated by an organization known as Congress of Racial Equality to "test" the use of the library facilities in the Town of Clinton by members of the negro race. All of the petitioners are negroes.

ARGUMENT

There is nothing in the record in this case to indicate that defendants were arrested for any reason other than the acts charged to them in the bill of information. When they entered the library and requested a book and their order was taken for the book by the employee on duty, they had used the facilities of the library to the full extent that anyone else could. At this point, the "test" was completed. They had no further lawful business, as far as the record goes, to remain in the library room unless the Court assumes that anyone who wishes to do so can use such facilities to loaf in. The Librarian testified (T. 99) that to her knowledge, no employee of the library had

ever been confronted with a situation such as this where five men, all strangers but Henry Brown, had come into the library and conducted themselves in the manner the petitioners did. Had these men requested any further service or any further reading material, their request would certainly have been given the same courteous treatment which Mrs. Reeves gave them initially. But simply to sit there, staring vacantly, giving no indication whatever of what they wanted or what they might do next was certainly enough to unnerve a woman in the situation Mrs. Reeves was in, particularly when the petitioners remained silent and immobile when Mrs. Reeves requested them to leave.

There is some testimony in the record to the effect that when Mrs. Perkins, the Librarian, requested the petitioners to leave, Henry Brown said, "What about the Constitution?" She replied that they had it at the library. She did not take this as a request for the Constitution. Neither Henry Brown nor any of the other petitioners testified in their defense, so this was never clarified. Evidently, Henry Brown was trying to say that the Constitution gave him the right to conduct himself in the manner he was doing.

This case does not involve any denial or due process or any rights given these petitioners under the Civil Rights Act of 1964. It simply involves whether any group or any person has the right to use a facility such as a public library room as a place in which to loaf or make a nuisance of themselves to the extent that the employees of such a facility or those wishing

to make a bona fide use of it are embarrassed and disturbed. Petitioners were not arrested because they were negroes. They were arrested because they stood and sat around in the library after they had been given all the service that they had requested to the extent that their wishes were made known and refused to leave when their business, as stated by Henry Brown, was completed.

CONCLUSION

Neither the facts nor the statute involved in this case presents any substantial federal question and it is respectfully submitted that the petition should be denied.

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RICHARD KILBOURNE,
District Attorney,
Clinton, Louisiana.

CERTIFICATE

I, the undersigned, hereby certify that I have this day mailed, postage prepaid, copies of the foregoing response to Messrs. Carl Rachlin and Collins, Douglas and Elie, attorneys for Petitioners, at their usual business addresses.

Baton Rouge, Louisiana this_____day of _____, 1965.

Jack P. F. Gremillion

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